FINANCIAL INSTITUTIONS

Budget Summary

Fund	2000-01 Base Year Doubled	2001-03 Governor	2001-03 Jt. Finance	2001-03 Legislature	2001-03 Act 16	Act 16 Change Over Base Year Doubled Amount	Percent
PR	$30,694,600	$31,177,500	$30,024,400	$30,264,400	$30,264,400	- $430,200	- 1.4%

FTE Position Summary

Fund	2000-01 Base	2002-03 Governor	2002-03 Jt. Finance	2002-03 Legislature	2002-03 Act 16	Act 16 Change Over 2000-01 Base
PR	168.50	170.25	168.50	168.50	168.50	0.00

Budget Change Items

1. STANDARD BUDGET ADJUSTMENTS

PR	- $430,200

Governor/Legislature: Adjust the agency's base budget for: (a) turnover reductions (-$193,000 annually); (b) nonrecurring costs (-$266,500 annually); (c) full funding of salaries and fringe benefits ($126,900 annually); (d) reclassifications ($45,800 in 2001-02 and $64,100 in 2002-03); (e) BadgerNet increases ($1,600 annually); and (f) fifth week of vacation as cash ($58,700 in 2001-02 and $63,200 in 2002-03).

2. CORPORATION INFORMATION TECHNOLOGY INITIATIVES [LFB Paper 440]

	Governor (Chg. to Base) Funding	Positions	Jt. Finance/Leg. (Chg. to Gov) Funding	Positions	Net Change Funding	Positions
GPR-REV	$0	0.00	$582,600	0.00	$582,600	0.00
PR	$582,600	1.75	- $582,600	- 1.75	$0	0.00

Governor: Provide $423,900 and 1.0 position in 2001-02 and $158,700 and 0.75 position in 2002-03 for three corporate information technology initiatives, described separately below.

Corporate Registration Information system—On-line Filing and Name Registration. Provide $321,900 and 1.0 project position in 2001-02 and $85,600 in 2002-03 to modify the corporate registration information system to allow on-line filings of corporate forms and name reservations. In the first year, funding would be provided for three contract positions ($260,300) and the project position ($61,600). In the second year, two contract positions would be funded. The work would be conducted primarily by the contract staff; the project position in the first year would assist in project coordination, perform administrative duties and test the system.

Business Portal. Provide $82,100 and 1.0 project position in 2002-03 to develop and implement a "build-your-business" portal to enable new businesses in Wisconsin to complete the necessary application forms on-line and to provide information to potential new businesses. The portal would provide a single entry point for businesses to file application forms with DFI, the Department of Revenue, the Department of Workforce Development, the Department of Natural Resources and other state agencies.

Conversion of Corporation Annual Reports. Provide $102,000 in 2001-02 and -$9,000 and -0.25 position in 2002-03 for the costs of scanning the last seven years of corporation annual reports to make them available on-line. It is estimated that 850,000 documents would be scanned at a cost of $0.12 per document. Scanning services would be performed by a private vendor. The reduced funding and position authority in 2002-03 are intended to reflect anticipated efficiencies from having this information available on-line.

Joint Finance/Legislature: Delete provision. Because unexpended funds from DFI's general program operations appropriation lapse to the general fund at the end of each year, the Joint Finance Committee's modification would increase GPR-Earned amounts by $423,900 in 2001-02 and $158,700 in 2002-03.

3. OTHER INFORMATION TECHNOLOGY INITIATIVES [LFB Paper 440]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR-REV	$0	0.00	$330,500	0.00	$330,500	0.00
PR	$330,500	2.00	- $330,500	- 2.00	$0	0.00

Governor: Provide $179,000 in 2001-02 and $151,500 in 2002-03 and 1.0 project position in each year for technology initiatives in the Division of Securities (DOS) and continuation and expansion of the Department's administrative information system (AIS). These initiatives are described briefly below.

Division of Securities Database Server. Provide $65,900 and 0.5 project position in 2001-02 to oversee conversion of the database format used by DOS to maintain licensing information from cyber-query / cyber-screen (CQCS) to structured query language (SQL).

Electronic Filing of Securities Documents. Provide $105,000 and 0.5 project position in 2002-03 to enable the Division of Securities to accept required corporate franchise and mutual fund filings electronically. This initiative would begin after conversion of the database outlined above, and the project position would be the same individual who performed work on the database conversion.

Administrative Information System. Provide $113,100 in 2001-02 and $46,500 in 2002-03 and 0.5 project position each year to continue and expand the administrative information system project included in 1999 Wisconsin Act 9. The AIS is an administrative computer network system that supports agency-wide licensing, examination, tracking, billing and receipting functions. The recommended funds would be used to enable the Department and financial institutions to conduct these activities on-line and to make the system more accessible and user friendly.

Joint Finance/Legislature: Delete provision. Because unexpended funds from DFI's general program operations appropriation lapse to the general fund at the end of each year, the Joint Finance Committee's modification would increase GPR-Earned amounts by $179,000 in 2001-02 and $151,500 in 2002-03.

4. BUSINESS ASSOCIATION FEES [LFB Paper 441]

	Governor (Chg. to Base)	Jt. Finance /Leg. (Chg. to Gov)	Net Change
GPR-REV	$0	$80,000	$80,000

Governor: Require DFI to establish, by rule, fees for all of the following:

a. Providing electronic access to, or preparing and supplying copies or certified copies of, any resolution, deed, bond, record, document or paper deposited with or kept by DFI under the statutes relating to business formation records.

b. Providing in an expeditious manner, electronic access to any document deposited with or kept by DFI under the statutes relating to business formation records.

c. Preparing, in an expeditious manner, any copies, certified copies, certificates or statements provided under the statutes relating to business formation records.

d. Issuing certificates or statements, in any form, relating to the results of searches of DFI's records and files.

e. Processing any service of process, notice or demand served on the Department.

f. Processing, in an expeditious manner, a document filed with the Department.

Eliminate the current statutory fees for certain services provided by the Department and, instead, specify that these fees would be established by rule. The specific fees that would be affected and the current statutory fee amounts are listed below. The current statutory fees would stay in effect until DFI has established new fees by rule, but not after December 31, 2002.

Current Statutory Fees Relating to Business Associations

Serving process on DFI under the uniform partnership act, the uniform limited partnership act or the statutes relating to corporations, nonstock corporations, LLCs and cooperative associations: $10.

Expedited processing of documents filed with DFI under these statutes and the statutes relating to business formation records and for expeditiously providing certain information: $25.

Providing verification of the existence or registration of, or certain other information pertaining to, a limited partnership or cooperative association: $4 if written, $7 if faxed.

Providing names and addresses of general partners and an office address for a partnership: $7 plus $.50 per additional page if more than one page is needed.

Certificate or statement of status of a corporation or LLC: $5.

Certificate or statement of status of a nonstock corporation: $5, or $10 if additional information is requested.

Copying a document deposited or kept by DFI under the statutes relating to business formation records and attaching a certificate: $.50 per page and $5 for a certificate. If a copy is not to be certified and if the reproduction is performed by DFI: the actual and necessary costs of reproduction and transcription or $2, whichever is greater.

Recording any document authorized or required by law to be recorded in DFI: $1 per page.

Providing certified copies of certificates of incorporations or amendments, licenses of foreign corporations, or similar certificates, and for certificates as to results of searches of DFI records and files, when a printed form is used: $5. If a specially prepared form is required: $10.

Telegraphic reports as to results of record searches: $5 plus the cost of the telegram.

Written information regarding the status of a cooperative association plus a list of the names and addresses of officers and directors, and the association's principal place of business: $7 plus $.50 per additional page if more than one page is needed.

Joint Finance/Legislature: Include the Governor's recommendation and estimate additional GPR-earned of $40,000 per year.

[Act 16 Sections: 2913 thru 2917, 2918, 2919, 2920, 2921 thru 2923, 2924, 2927, 2928, 2933 thru 2936 and 9120(2)]

5. CHANGES TO REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN CONSUMER CREDIT ENTITIES

Governor/Legislature: Amend current statutes to require persons who make or solicit consumer credit transactions to list the year-end balance of all consumer credit transactions rather than the average monthly outstanding balance in the required registration statement filed with DFI. Specify that credit transactions a person has obtained or entered into by assignment be included in the year-end balance reported. No requirement to include these types of transactions in the balance exists in current law.

Alter the calculation of the registration fee paid by persons who make or solicit consumer credit transactions by basing it on the person's year-end balance rather than on the average monthly outstanding balance. Require the Secretary of DFI to establish the registration fee by administrative rule. Currently, the Secretary determines the fee but no rule is required. Repeal the current registration fee limits, which are $25 at minimum and the lesser of $1,500 or 0.005% of the average monthly outstanding balance at maximum.

Alter the registration requirement so that persons who make or solicit consumer credit transactions would be required to register annually only if the person's year-end balance is greater than $250,000.

[Act 16 Sections: 3493 thru 3504]

6. ELIMINATE FUNDING FOR FINANCIAL EDUCATION PROGRAM

	Jt. Finance (Chg. to Base)	Legislature (Chg. to JFC)	Net Change
GPR-REV	$240,000	- $240,000	$0
PR	- $240,000	$240,000	$0

Joint Finance: Decrease the Department's base budget by $120,000 in 2001-02 and in 2002-03 to eliminate funding provided in the 1999-01 budget to educate the public about their rights and responsibilities in financial matters.

Senate/Assembly/Legislature: Restore funding.

7. REGULATION OF CREDIT UNIONS

Governor: Specify that credit unions are not included in the definition of "business" that is subject to regulation by the Department of Agriculture, Trade and Consumer Protection. Currently, banks, savings banks, saving and loan associations and insurance companies are excluded from this definition.

Make the following changes to the statutes relating to the regulation of credit unions (Chapter 186 of the statutes):

Definitions

Modify the current definition of "credit union" to provide exceptions for credit unions resulting from interstate acquisitions and mergers and for non-Wisconsin credit unions that operate in this state under provisions outlined below. Under current law, "credit union" means a cooperative, nonprofit corporation, incorporated under Chapter 186 to encourage thrift among its members, create a source of credit at a fair and reasonable cost and provide an opportunity for its members to improve their economic and social conditions.

Credit Union Bylaws and Board Duties

Change the statutes related to credit union bylaws and board duties as follows:

a. Specify that credit union bylaws would have to prescribe the conditions that determine eligibility for membership. Currently, the bylaws must prescribe the conditions of residence or occupation that qualify persons for membership.

b. Amend the current requirement that credit unions be open to certain groups of individuals, including residents within a well-defined neighborhood, community or rural district to require, instead, that credit unions be open to individuals who reside or are employed within: (1) well-defined and contiguous neighborhoods and communities; or (2) well-defined and contiguous rural districts or multicounty regions. Provide that if, following a merger of credit unions, DFI's Office of Credit Unions (OCU) determines that it would be inappropriate to require members of the resulting credit union to reside or be employed within well-defined and contiguous neighborhoods and communities, the requirement under (1) would not apply.

c. Eliminate the definition of "members of the immediate family" in the current provision specifying that members of the immediate family of all qualified persons are eligible for membership. Under present law, "members of the immediate family" include the wife, husband, parents, stepchildren and children of a member whether living together in the same household or not and any other relatives of the member or spouse of a member living together in the same household as the member. Under the provision, "members of the immediate family" would be defined in the general bylaws establishing membership criteria under (a) above.

d. Provide that organizations and associations of individuals could be admitted to membership in a credit union in the same manner and under the same conditions as individuals if the majority of the association's or organization's directors, owners or members are eligible. Current law provides that such organizations and associations are eligible if the majority of individuals in the association or organization are eligible for membership. Also, specify that an organization or association that has its principal business location within the geographic limits of the credit union's field of membership could be admitted to membership.

Investments of Credit Unions

Make the following changes to the statutes relating to investments of credit unions:

a. Change all references regarding investment in "credit union service corporations" to, instead, refer to "credit union service organizations."

b. Permit a credit union to invest more than 1.5% of its total assets in the capital shares or obligations of a credit union service organization organized primarily to provide goods and services to credit unions, credit union organizations and credit union members, if approved by OCU. Allow such investments in service organizations that are structured as corporations, limited partnerships, limited liability companies or other entities that are permitted under state law and approved by OCU. Under current law, a credit union may invest up to 1.5% of its total assets in the capital shares or obligations of a credit union service corporation. OCU may not approve a higher percentage, and the service organization must be a corporation.

c. Add electronic transaction services to the list of services that credit union service organizations may provide.

Credit Union Powers

Make the following changes to the statutes on credit union powers:

a. Provide that, with OCU's approval, a credit union could establish branch offices inside this state or outside of this state. Currently, a credit union may establish branch offices in Wisconsin or no more than 25 miles outside of this state if the need and necessity exist and with the approval of OCU.

b. Provide that the current law provisions that authorize a credit union to establish limited services offices outside this state to serve any member of the credit union under specified conditions would only apply to such services established prior to the budget bill's general effective date. [Out-of-state branch offices would be permitted after that date.]

c. Authorize credit unions to: (1) act as trustees or custodians of member tax deferred retirement funds, individual retirement accounts, medical savings accounts or other employee benefit accounts or funds permitted by federal law to be deposited in a credit union; and (2) act as a depository for member qualified and nonqualified deferred compensation funds as permitted by federal law. Current law authorizes credit unions to act as trustees of member tax

deferred funds permitted by federal law to be deposited in a credit union and to act as a depository for member-deferred compensation funds as permitted by federal law.

d. Create a provision that would authorize a credit union to accept deposits made by members for the purpose of funding burial agreements by certain trusts.

Financial Privacy

Create a new provision requiring credit unions to comply with federal requirements and regulations prescribed by the National Credit Union Administration relating to financial privacy, and requiring OCU to examine a credit union to determine compliance with these provisions.

Office of Credit Unions

a. Require employees of OCU and members of the Credit Union Review Board to keep secret all facts and information obtained in the course of examinations or contained in any report provided by a credit union other than any semiannual or quarterly financial report that is regularly filed with OCU, except in specified situations. Current law does not include the reference to information "contained in any report provided by a credit union other than any semiannual or quarterly financial report that is regularly filed with the Office of Credit Unions."

b. Provide that if an OCU employee or Credit Union Review Board member illegally discloses information about the private account or transactions of a credit union or information obtained in the course of a credit union examination, that person could be required to forfeit his or her office or position and could be fined between $100 and $1,000, imprisoned for six months to three years, or both.

c. Specify that examination reports possessed by credit unions are confidential, remain the property of OCU and must be returned to the office immediately upon request.

d. Repeal the current provision that allows OCU to accept certain audits in lieu of conducting an annual examination. Under present law, at least annually, OCU must examine the records and accounts of each credit union. However, instead of conducting an examination, OCU may accept an audit report made by a certified public accountant not an employee of the credit union in accordance with rules of the Office or may accept an examination or audit made or approved by the National Credit Union Administration Board (NCUAB).

Sales of Insurance in Credit Unions

Require any officer or employee of a credit union, when acting as an agent for the sale of insurance on behalf of the credit union, to pay all commissions received from the sale of insurance to the credit union. Current law provides similar provisions but specifies that they apply to such commissions received from the sale of credit life insurance or credit accident and sickness insurance.

Interstate Acquisitions and Mergers of Credit Unions

Amend the statutes related to interstate acquisitions and mergers of credit unions as follows:

a. Define a "Wisconsin credit union" as a credit union having its principal office located in this state. Current law applies this definition to an "in-state credit union" rather than a "Wisconsin credit union."

b. Authorize a Wisconsin credit union to acquire or merge with credit unions located in any other state. Currently, an in-state credit union may acquire or merge with one or more regional credit unions (a state or federal credit union that has its principal office located in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri or Ohio).

c. Allow any out-of-state credit union (a state or federal credit union that has its principal office in a state other than Wisconsin) to acquire or merge with Wisconsin credit unions. Current law allows only regional credit unions to acquire or merge with in-state credit unions.

d. Repeal a current provision that requires any in-state or regional credit union that has acquired assets of or merged with an in-state credit union and that ceases to be an in-state credit union or regional credit union to immediately notify OCU of the change in its status and, as soon as practical within two years after the event causing it to no longer be one of these entities, divest itself of control of any interest in the assets or operations of any in-state credit union. In addition, repeal the current penalty for failure to immediately notify OCU (a forfeiture of $500 for each day beginning with the day its status changes and ending with the day notification is received by the Office).

Wisconsin Offices of a Non-Wisconsin Credit Union

Create the following provisions related to a Wisconsin office of a non-Wisconsin Credit Union

Definitions. Define a "non-Wisconsin credit union" as a credit union organized under the laws of and with its principal office located in another state. Specify that "Wisconsin credit union" would have the meaning given under "Interstate Acquisitions and Mergers of Credit Unions."

Authority. Permit non-Wisconsin credit unions to open an office and conduct business as a credit union in this state if OCU finds that Wisconsin credit unions are allowed to do business in the other state under conditions similar to those contained under these provisions and that all of the following apply to the non-Wisconsin credit union: (a) it is organized under laws similar to the credit union laws of this state; (b) it is financially solvent based upon NCUAB ratings; (c) it has member savings insured with federal share insurance; (d) it is effectively examined and supervised by the credit union authorities of the state in which it is organized; (e) it has received approval from the credit union authorities of the state in which it is organized; (f) it has a need

to place an office in this state to adequately serve its members in this state; and (g) it meets all other relevant standards or qualifications established by OCU.

Requirements. Require non-Wisconsin credit unions to do all of the following: (a) grant loans at rates not in excess of the rates permitted for Wisconsin credit unions; (b) comply with Wisconsin laws; and (c) designate and maintain an agent for the service of process in this state.

Records. Specify that, as a condition of a non-Wisconsin credit union doing business in this state, OCU could require the non-Wisconsin credit union to provide copies of examination reports and other related correspondence from the state in which the non-Wisconsin credit union has its principal office.

False Statements

Create a provision that would prohibit an officer, director, or employee of a credit union from: (a) willfully and knowingly subscribing to or making, or causing to be made, a false statement or entry in the books of the credit union; (b) knowingly subscribing to or exhibiting false information with the intent to deceive any person authorized to examine the affairs of the credit union; and (c) knowingly making, stating, or publishing any false report or statement of the credit union. Specify that any person who commits any of these infractions could be fined not less than $1,000 nor more than $5,000 or imprisoned for not less than one year nor more than 15 years, or both.

Joint Finance: Delete provision as non-fiscal policy.

Assembly: Restore provision.

Conference Committee/Legislature: Delete provision.

8. UNIVERSAL BANKING

Governor: Authorize the Division of Banking (DOB) within the Department of Financial Institutions to certify savings banks, saving and loan associations and state banks as "universal banks" under the procedures and with the powers outlined below. Provide that a universal bank would be one of the regulated entities under the powers of supervision and control of DOB. The provisions relating to universal banks would be created in a new chapter of the statutes, and could be cited as the "Wisconsin universal bank law" (UB Law).

General Provisions

Under current law, the Division of Savings Institutions (DSI) regulates savings banks and savings and loan associations. DOB regulates state banks. The powers and regulation of these financial institutions are specified in the statutes and vary by type of institution. The UB Law would allow such financial institutions organized under state statutes to apply to DOB to be certified as a universal bank. Certification as a universal bank would provide expanded powers

when compared to those currently held by the individual financial institutions. Financial institutions certified as universal banks would remain subject to existing requirements, duties and liabilities and would retain their powers as savings banks, savings and loan associations or state banks, except that, in the event of a conflict between the UB Law and such requirements, duties, liabilities or powers, the UB Law would control.

The Division of Banking would be required to administer the UB Law for all universal banks and to establish such fees as it determined were appropriate for documents filed with the Division and for services provided by the Division. DOB would also be authorized to promulgate rules to carry out the UB Law and to establish additional limits or requirements on universal banks if it determined that the limits or requirements were necessary for the protection of depositors, members, investors or the public.

Certification

A state-chartered savings bank, savings and loan association or bank would be allowed to apply to become certified as a universal bank by filing a written application with DOB including such information as the Division required and on such forms and in accordance with such procedures as DOB prescribed. DOB would be required to approve or disapprove the application in writing within 60 days after its submission to the Division. However, DOB and the financial institution could mutually agree to extend the application period for an additional 60 days.

DOB would be required to approve an application for certification as a universal bank if the applying financial institution met all of the following requirements:

a. It was chartered or organized, and regulated, as a savings bank, savings and loan association or state bank under Wisconsin statutes and had been in existence and continuous operation for a minimum of three years prior to the date of the application.

b. It was "well-capitalized" as defined by federal law related to banks and banking.

c. It did not exhibit a combination of financial, managerial, operational and compliance weaknesses that were moderately severe or unsatisfactory, as determined by the Division based upon the Division's assessment of the financial institution's capital adequacy, asset quality, management capability, earnings quantity and quality, adequacy of liquidity and sensitivity to market risk.

d. During the 12-month period prior to the application, it had not been the subject of an enforcement action and had no enforcement action pending against it by any state or federal financial institution regulatory agency, including DOB.

e. The most recent evaluation under federal community reinvestment laws rated the financial institution as "outstanding" or "satisfactory" in helping to meet the credit needs of its

entire community, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of the institution.

f. The financial institution's federal-level regulator determined, by means of an examination, that the institution was in substantial compliance with federal laws regarding the protection of customers' nonpublic personal information.

For any period during which a universal bank failed to meet such requirements, the Division would be required to limit or restrict the exercise of the powers of the universal bank under the UB Law. In addition, the Division could revoke the universal bank's certificate of authority.

DOB would be required to issue to an applicant approved for certification as a universal bank a certificate of authority stating that the financial institution was so certified.

A financial institution certified as a universal bank would be authorized to terminate its certification upon 60 days' prior written notice to the Division and written approval of the Division. As a condition to the termination, the financial institution would be required to terminate its exercise of all powers granted under the UB Law prior to the termination of the certification. Written approval of the termination by DOB would be void if the financial institution failed to satisfy this precondition to termination.

Organization

Articles of Incorporation and Bylaws. A universal bank would continue to operate under its articles of incorporation and bylaws as in effect prior to certification as a universal bank or as such articles or bylaws were subsequently amended in accordance with the provisions of the statutes under which the universal bank was organized or chartered.

Name of a Universal Bank. Under current law and with certain exceptions, an institution organized as a state savings bank is required to adopt a name that identifies it as such and that includes the term "savings." With certain exceptions, an institution organized as a mutual savings and loan association or as a capital stock savings and loan association is required to include the words "savings and loan association" or "savings association" in its name. Such an institution is required to include the word "savings" in its name if its name includes the word "bank."

Subject to certain provisions on distinguishability and use of the same name, as described below, the UB Law would allow a state savings bank, state mutual savings and loan association or state capital stock savings and loan association that had been certified as a universal bank to use the word "bank" in its name, without having to include the word "savings." In addition, subject to the same provisions on distinguishability and use of the same name, the UB Law would specify that a universal bank organized as a savings and loan association that used the word "bank" in its name in accordance with the UB Law need not include the words "savings and loan association" or "savings association" in its name.

The UB Law would require that, with certain exceptions, the name of the universal bank be distinguishable upon the records of DOB from the following: (a) the name of any other financial institution organized under the laws of this state; and (b) the name of a national bank or foreign bank authorized to transact business in this state.

However, a universal bank would be allowed to apply to the Division for authority to use a name that did not meet such requirements as to a distinguishable name. DOB could authorize the use of the name if either of the following conditions were met: (a) the other bank consented to the use in writing and submitted an undertaking, in a form satisfactory to DOB, to change its name to a name that was distinguishable upon the records of the Division from the name of the applicant; or (b) the applicant delivered to DOB a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state. Such exceptions to the distinguishable name requirements are consistent with current law for state banks.

In addition, a universal bank would be able to use a name that was used in this state by another financial institution, or by an institution authorized to transact business in this state, if the universal bank had done any of the following: (a) merged with the other institution; (b) been formed by reorganization of the other institution; or (c) acquired all or substantially all of the assets, including the name, of the other institution.

Capital Requirements

Current law provides differing requirements related to capital, net worth and capital stock for the various types of financial institutions. For a savings bank, the statutes specify that such an institution may be organized to exercise the powers conferred by the relevant statutes with minimum capital, surplus and reserves for operating expenses as determined by the Division of Savings Institutions. Additional specifications are made in such areas as evidence and maintenance of capital, dividends and the nature of capital stock, capital stock loans and retirement or reduction of capital stock.

The statutes on savings and loan associations provide that such institutions must maintain net worth at an amount not less than the minimum amount established by DSI and authorize DSI to take appropriate action if an association fails to maintain the minimum net worth required.

Under current law, DOB determines the required capital of a state bank, subject to review by the Banking Review Board. The statutes also specify that a contingent fund and paid-in surplus each in an amount equal to at least 25% of the aggregate amount of the capital stock must be subscribed at the time the subscription list of shareholders is prepared by the incorporators.

Notwithstanding such provisions, the UB Law would authorize DOB to determine the minimum capital requirements of a savings bank, savings and loan association and state bank certified as a universal bank.

The UB Law would define capital for a universal bank organized as a stock organization as the sum of the following, less the amount of intangible assets that were not considered to be qualifying capital by a deposit insurance corporation or the Division: (a) capital stock; (b) preferred stock; (c) undivided profits; (d) surplus; (e) outstanding notes and debentures approved by DOB; (f) other forms of capital designated as capital by the Division; and (g) other forms of capital considered to be qualifying capital of the universal bank by a deposit insurance corporation. For a universal bank organized as a mutual organization, the same definition would apply except that net worth would be substituted for capital and preferred stock. "Deposit insurance corporation" would mean the Federal Deposit Insurance Corporation or other instrumentality of, or corporation chartered by, the United States that insures deposits of financial institutions and that is supported by the full faith and credit of the U.S. government as stated in a congressional resolution.

Under current law, a state savings bank is required to achieve and maintain status as an Internal Revenue Service qualified thrift lender. Such status requires meeting either the 60% asset test of the section of the Internal Revenue Code (IRC) on domestic building and loan associations, or an asset test prescribed by rule of DSI that is not less than the percentage prescribed by such section of the IRC. The UB Law would specify that this requirement does not apply to universal banks.

Acquisitions, Mergers and Asset Purchases

The UB Law would authorize a universal bank, with the approval of DOB, to purchase the assets of, merge with, acquire or be acquired by any other financial institution, universal bank, national bank, federally chartered savings bank or savings and loan association, or by a holding company of any of these entities. An application for approval of such acquisitions, mergers and asset purchases would have to be submitted on a form prescribed by DOB and accompanied by a fee determined by the Division. Notwithstanding other provisions of state law, DSI approval would not be required for acquisitions or mergers involving a state savings bank or savings and loan association.

In processing and acting on applications for approval of acquisitions, mergers and asset purchases involving a universal bank, DOB would be required to apply the standards specified in the statutes governing the type of financial institution under which the universal bank had been organized or chartered.

Federal Financial Institution Powers

Subject to the limitations outlined below, the UB Law would authorize universal banks to exercise all powers that may be exercised, directly or indirectly through a subsidiary, by a

federally chartered savings bank, a federally chartered savings and loan association or a federally chartered national bank. A universal bank would be required to file a written request with DOB to exercise a power under these provisions. Within 60 days after receiving the request, the DOB would be required to approve or disapprove it. The 60-day deadline could be extended by an additional 60 days if DOB and the institution mutually agree to an extension. The UB Law would specify that DOB could require that certain powers exercisable by universal banks be exercised through a subsidiary of the universal bank with appropriate safeguards to limit the risk exposure of the universal bank.

Loan Powers

General Provisions. The UB Law would permit a universal bank to make, sell, purchase, arrange, participate in, invest in or otherwise deal in loans or extensions of credit for any purpose. With the exceptions described below, the total liabilities of any person, other than a municipal corporation, to a universal bank for a loan or extension of credit could not exceed 20% of the capital of the universal bank at any time. In determining compliance with this restriction, liabilities of a partnership would include the liabilities of the general partners, computed individually as to each general partner on the basis of his or her direct liability.

However, the UB Law would provide that the percentage limitation described above would be 50% of the universal bank's capital if the borrower's debts were limited to certain types of liabilities. The first type includes a liability secured by warehouse receipts issued by warehouse keepers who are licensed and bonded under state law or under the federal Bonded Warehouse Act or who hold a registration certificate under Wisconsin law referred to as the Warehouse Keepers and Grain Dealers Security Act, if: (a) the receipts cover readily marketable nonperishable staples; (b) the staples are insured, if it is customary to insure the staples; and (c) the market value of the staples is not, at any time, less than 140% of the face amount of the obligation.

The second type of liability for which the percentage limitation described above would be 50% of the universal bank's capital is a liability in the form of a note or bond that met any of the following qualifications: (a) the note or bond is secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States; (b) the note or bond is secured or covered by guarantees or by commitments or agreements to take over, or to purchase, the bonds or notes, and the guarantee, commitment or agreement was made by a federal reserve bank, the federal Small Business Administration, the federal Department of Defense or the federal Maritime Commission; or (c) the note or bond is secured by mortgages or trust deeds insured by the federal Housing Administration.

Local Governmental Units. The UB Law would specify that liabilities of a local governmental unit could not exceed 25% of a universal bank's capital. However, if the local governmental unit's liabilities were in the form of general obligations, the limit would be extended to 50%. If the liabilities included both revenue and general obligations, the limit

would be 25% for the revenue obligations and a total of 50% for the combination of revenue and general obligations.

In addition, the total amount of temporary borrowings of any local governmental unit maturing within one year after the date of issue could not exceed 60% of the capital of the universal bank. Temporary borrowings and longer-term general obligation borrowings of a single local governmental unit could be considered separately in determining compliance with this provision.

Foreign National Government Bonds. A universal bank would be authorized to purchase general obligation bonds issued by any foreign national government if the bonds were payable in United States funds. The aggregate investment in these foreign bonds would not be permitted to exceed 3% of the capital of the universal bank, except that this limitation would not apply to bonds of the Canadian government and Canadian provinces that were payable in United States funds.

Other Foreign Bonds. The UB Law would authorize a universal bank to purchase bonds offered for sale by the International Bank for Reconstruction and Development and the Inter-American Development Bank or such other foreign bonds as were approved under rules established by DOB. The UB Law would specify that the aggregate investment in any of these bonds issued by a single issuer could not exceed 10% of the capital of the universal bank.

Limits Established by the Board of Directors. The UB Law would provide that the board of directors of a universal bank could establish an aggregate total level above which a universal bank could not make or renew a loan or loans without being supported by a signed financial statement of the borrower, unless the loan was secured by collateral having a value in excess of the amount of the loan. A signed financial statement furnished by the borrower to a universal bank in compliance with this provision would have to be renewed annually as long as the loan or any renewal of the loan remained unpaid and was subject to this provision. A loan or a renewal of a loan made by a universal bank in compliance with the level established by the board of directors of the universal bank, without a signed financial statement, could be treated by the universal bank as entirely independent of any secured loan made to the same borrower if the loan did not exceed the limitations provided under the UB Law related to loan powers.

Exceptions to Loan Powers of Universal Banks. The limits on individual liabilities would not apply to the following:

a. Liabilities secured by certain short-term federal obligations. A liability that was secured by not less than a like amount of direct obligations of the United States which would mature not more than 18 months after the date on which such liabilities to the universal bank were entered into;

b. Certain federal and state obligations or guaranteed obligations. A liability that was a direct obligation of the United States or this state, or an obligation of any governmental

agency of the United States or this state, that was fully and unconditionally guaranteed by the United States or this state;

c. Commodity Credit Corporation liabilities. A liability in the form of a note, debenture or certificate of interest of the Commodity Credit Corporation;

d. Discounting bills of exchange or business or commercial paper. A liability created by the discounting of bills of exchange drawn in good faith against actually existing values or the discounting of commercial or business paper actually owned by the person negotiating the same; and

e. Certain other federal or federally guaranteed obligations. In obligations of, or obligations that were fully guaranteed by, the United States and in obligations of any federal reserve bank, federal home loan bank, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Export-Import Bank of Washington or the Federal Deposit Insurance Corporation.

Additional Loan Authority. Under current law for state banks, debts due a bank on which interest is past due and unpaid for a period of 12 months generally must be considered bad debts. Such bad debts must be charged off to the profit and loss account at the expiration of one year from the date on which the debt became past due, unless the debts are well secured or in the process of collections.

The UB Law would permit a universal bank to lend, to all borrowers, up to 20% of its capital, which would not be subject to classification as bad debts or losses for a period of two years. A universal bank or its subsidiary would be permitted to take an equity position or other form of interest as security in a project funded under this additional loan authority. Every transaction by a universal bank or its subsidiary under these provisions would require prior approval by the governing board of the universal bank or its subsidiary, respectively. Such loans could be dispersed directly or through a subsidiary. However, neither a universal bank nor any subsidiary of the universal bank could lend to any individual borrower an amount that would result in an aggregate amount for all loans to that borrower to exceed 20% of the universal bank's capital. As outlined below, DOB could suspend this additional loan authority.

Suspension of Additional Loan Authority. DOB could suspend the additional loan authority and, in such case, specify how an outstanding loan would be treated by the universal bank or its subsidiary. Among the factors that the Division could consider in suspending authority under this provision are the universal bank's capital adequacy, asset quality, earnings quantity, earnings quality, adequacy of liquidity and sensitivity to market risk and the ability of the universal bank's management.

Exercise of Loan Powers; Prohibited Considerations. In determining whether to make a loan or extension of credit, no universal bank could consider any health information obtained

from the records of an affiliate of the universal bank that is engaged in the business of insurance, unless the person to whom the health information relates consents.

Investment Powers

Investment Securities. With certain exceptions described below, a universal bank would be authorized to purchase, sell, underwrite and hold investment securities, consistent with safe and sound banking practices, up to 100% of the universal bank's capital. A universal bank would not be permitted to invest greater than 20% of its capital in the investment securities of one obligor or issuer. For purposes of this provision, "investment securities" would include commercial paper, banker's acceptances, marketable securities in the form of bonds, notes, debentures and similar instruments that are regarded as investment securities.

Equity Securities. Subject to the same exceptions, a universal bank would also be authorized to purchase, sell, underwrite and hold equity securities, consistent with safe and sound banking practices, up to 20% of capital or, if approved by the Division in writing, a greater percentage of capital.

Exceptions to Securities Investment Powers. The UB Law would specify the following exceptions to the general powers of a universal bank to invest in investment and equity securities.

a. Housing Activities. With the prior written consent of DOB, a universal bank would be permitted to invest in the initial purchase and development, or the purchase or commitment to purchase after completion, of home sites and housing for sale or rental, including projects for the reconstruction, rehabilitation or rebuilding of residential properties to meet the minimum standards of health and occupancy prescribed for a local governmental unit, the provision of accommodations for retail stores, shops and other community services that were reasonably incident to that housing, or in the stock of a corporation that owned one or more of those projects and that was wholly owned by one or more financial institutions. The total investment in any one project could not exceed 15% of the universal bank's capital, nor could the aggregate investment under these provisions exceed 50% of capital. Under these provisions, a universal bank could not make an investment unless it was in compliance with the capital requirements set by DOB under the UB Law and with the capital maintenance requirements of its deposit insurance corporation.

b. Profit-Participation Projects. The UB Law would specify that a universal bank could take equity positions in profit-participation projects, including projects funded through loans from the universal bank, in an aggregate amount not to exceed 20% of capital. However, DOB could suspend the investment authority under this provision. If the Division suspended the investment authority, the Division could specify how outstanding investments in such projects would be treated by the universal bank or its subsidiary. Among the factors that the Division could consider in suspending authority under this provision are the universal bank's capital adequacy, asset quality, earnings quantity, earnings quality, adequacy of liquidity and

sensitivity to market risk and the ability of the universal bank's management. These provisions would not authorize a universal bank, directly or indirectly through a subsidiary, to engage in the business of underwriting insurance.

c. Debt Investments. In general, the UB Law would authorize a universal bank to invest in bonds, notes, obligations and liabilities as described under the UB Law with respect to loan powers, subject to the limitations under those provisions. However, the limits outlined in the section on loan powers would not apply to the following liabilities: (a) liabilities secured by certain short-term federal obligations; (b) certain federal and state obligations or guaranteed obligations; (c) Commodity Credit Corporation liabilities; (d) liabilities created by discounting bills of exchange or business or commercial paper; or (e) certain other federal or federally guaranteed obligations. Such liabilities are described in greater detail under the preceding provisions on loan powers.

Additional Investments. The UB Law would provide that a universal bank could invest without limitation in any of the following:

a. Stocks or obligations of a corporation organized for business development by this state or by the United States or by an agency of this state or the United States.

b. Obligations of an urban renewal investment corporation organized under the laws of this state or of the United States.

c. An equity interest in an insurance company or an insurance holding company organized to provide insurance for universal banks and for persons affiliated with universal banks, solely to the extent that this ownership was a prerequisite to obtaining directors' and officers' insurance or blanket bond insurance for the universal bank through the company.

d. Shares of stock, whether purchased or otherwise acquired, in a corporation acquiring, placing and operating remote service units of a savings banks or savings and loan association or for bank communications terminals.

e. Equity or debt securities or instruments of a service corporation subsidiary of the universal bank.

f. Advances of federal funds.

g. With the prior written approval of the Division, financial futures transactions, financial options transactions, forward commitments or other financial products for the purpose of reducing, hedging or otherwise managing the bank's interest rate risk exposure.

h. A subsidiary organized to exercise corporate fiduciary powers under state law.

i. An agricultural credit corporation. Unless a universal bank owned at least 80% of the stock of the agricultural credit corporation, a universal bank could not invest more than 20% of the universal bank's capital in the agricultural credit corporation.

j. Deposit accounts or insured obligations of any financial institution, the accounts of which are insured by a deposit insurance corporation.

k. Obligations of, or obligations that are fully guaranteed by, the United States and stocks or obligations of any federal reserve bank, federal home loan bank, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Deposit Insurance Corporation.

l. Any other investment authorized by DOB.

In addition to the authority granted under the UB Law on acquisitions, mergers and asset purchases and on stock in bank-owned banks, and subject to the provisions of the UB Law with respect to equity securities, a universal bank would be authorized to invest in other financial institutions.

A universal bank would be permitted to make investments under the provisions outlined above, directly or indirectly through a subsidiary, unless DOB determined that an investment should be made through a subsidiary with appropriate safeguards to limit the risk exposure of the universal bank.

Universal Bank Purchase of its Own Stock

With certain exceptions, a universal bank could hold or purchase not more than 10% of its own capital stock, notes or debentures. However, a universal bank could exceed this limit if approved by DOB. In addition, a universal bank could hold or purchase more than 10% of its capital stock, notes or debentures if the purchase was necessary to prevent loss upon a debt previously contracted in good faith. Stock, notes or debentures held or purchased under this provision could not be held by the universal bank for more than six months if the securities could be sold for the amount of the claim of the universal bank against the holder of the debt previously contracted. The universal bank would be required to either sell the stock, notes or debentures within 12 months of acquisition under this provision or to cancel the stock, notes or debentures. Cancellation of the stock, notes or debentures would reduce the amount of the universal bank's capital stock, notes or debentures. If the reduction decreased the universal bank's capital below the minimum level required by DOB, the universal bank would have to increase its capital to the required amount.

A universal bank could not loan any part of its capital, surplus or deposits on its own capital stock, notes or debentures as collateral security, except that a universal bank would be allowed to make a loan secured by its own capital stock, notes or debentures to the same extent

that the universal bank could make a loan secured by the capital stock, notes and debentures of a holding company for the universal bank.

Stock in Bank-Owned Banks

With the approval of DOB, a universal bank would be authorized to acquire and hold stock in one or more banks chartered under state statutes on bank-owned banks or national banks chartered under federal law or in one or more holding companies wholly owning such a bank. Aggregate investments under this provision could not exceed 10% of the universal bank's capital.

General Deposit Powers

The UB Law would provide that a universal bank could set eligibility requirements for, and establish the types and terms of, deposits that the universal bank could solicit and accept. The terms set under this provision could include minimum and maximum amounts that the universal bank would be able to accept and the frequency and computation method of paying interest.

A universal bank would be allowed to pledge its assets as security for deposits, subject to the limitations under current law applicable to banks.

With the approval of DOB, a universal bank would be permitted to securitize its assets for sale to the public. The Division could establish procedures governing the exercise of authority granted under this provision.

A universal bank would be authorized to take and receive, from any individual or corporation for safekeeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuables or personal property. A universal bank could also rent out the use of safes or other receptacles upon its premises. A universal bank would have a lien for its charges on any property taken or received by it for safekeeping. If the lien was not paid within two years from the date the lien accrued, or if property was not called for by the person depositing the property, or by his or her representative or assignee, within two years from the date the lien accrued, the universal bank could sell the property at public auction. A universal bank would be required to provide the same notice for a sale under this provision that is required for sales of personal property on execution. After retaining from the proceeds of the sale all of the liens and charges due the bank and the reasonable expenses of the sale, the universal bank would be required to pay the balance to the person depositing the property, or to his or her representative or assignee.

Other Service and Incidental Activity Powers

Unless otherwise prohibited or limited by the UB Law, a universal bank would be authorized to exercise all powers necessary or convenient to effect the purposes for which the

universal bank was organized or to further the businesses in which the universal bank was lawfully engaged.

Reasonably Related and Incidental Activities. Subject to any applicable state or federal regulatory or licensing requirements, a universal bank could engage, directly or indirectly through a subsidiary, in activities reasonably related or incident to the purposes of the universal bank. Such activities would be those that are part of the business of financial institutions, or closely related to the business of financial institutions, or convenient and useful to the business of financial institutions, or reasonably related or incident to the operation of financial institutions or are financial in nature. Activities that would be considered reasonably related or incident to the purposes of a universal bank would specifically include the following:

1. Business and professional services;
2. Data processing;
3. Courier and messenger services;
4. Credit-related activities;
5. Consumer services;
6. Real estate-related services, including real estate brokerage services;
7. Insurance and related services, other than insurance underwriting;
8. Securities brokerage;
9. Investment advice;
10. Securities and bond underwriting;
11. Mutual fund activities;
12. Financial consulting;
13. Tax planning and preparation;
14. Community development and charitable activities;
15. Debt cancellation contracts;
16. Any activities reasonably related or incident to activities on the list above as determined by rule of DOB;
17. An activity that is authorized by statute or regulation for financial institutions to engage in as of the effective date of this provision (the first day of the third month beginning after publication of the budget bill); and
18. An activity permitted under the Bank Holding Company Act.

In addition, DOB would be authorized to expand, by rule, the list of activities reasonably related or incident to the purposes of a universal bank. Any additional activity approved by the Division would be authorized for all universal banks.

A universal bank would be required to give 60 days' prior written notice to DOB of the universal bank's intention to engage in an activity under these provisions.

Standards for Denial. DOB would be permitted to deny the authority of a universal bank to engage in an activity under these provisions, other than the first 15 activities listed above, if the Division determined any of the following: (a) that the activity was not an activity reasonably

related or incident to the purposes of a universal bank; (b) that the universal bank was not well-capitalized; (c) that the universal bank was the subject of an enforcement action; or (d) that the universal bank did not have satisfactory management expertise for the proposed activity.

Insurance Intermediation. A universal bank, or an officer or salaried employee of a universal bank, would be permitted to obtain a license as an insurance intermediary, if otherwise qualified. A universal bank could not, directly or indirectly through a subsidiary, engage in the business of underwriting insurance.

Activities Approved by DOB. A universal bank would be authorized to engage in any other activity that was approved by rule of DOB. In addition, a universal bank could engage in activities under these provisions, directly or indirectly through a subsidiary, unless the Division determined that an activity had to be conducted through a subsidiary with appropriate safeguards to limit the risk exposure of the universal bank.

Activities Provided Through a Subsidiary. The amount of the investment in any one subsidiary that engaged in an activity under these provisions could not exceed 20% of capital or a higher percentage if approved by DOB. The aggregate investment in all subsidiaries that engaged in an activity under this provision could not exceed 50% of capital or a higher percentage authorized by the Division. A subsidiary that engaged in an activity under these provisions could be owned jointly, with one or more other financial institutions, individuals or entities.

Trust Powers

Subject to rules of DOB, a universal bank would be permitted to exercise trust powers in accordance with such authority granted by the statutes to state banks.

Rule-Making

DOB would be permitted to establish a rule specifying activities that are related to or incident to the purposes of a universal bank without complying with the notice, hearing and publication procedures under Chapter 227. The Division would be required to file the rule with the Secretary of State and the Revisor of Statutes, as generally required under Chapter 227. At the time of filing, DOB would be required to mail a copy of the rule to the chief clerk of each house and to each member of the Legislature. In addition, DOB would be required to publish a class 1 notice containing a copy of the rule in the official state newspaper and take any other step it considers feasible to make the rule known to persons who will be affected by it.

For other rules related to the UB Law, DOB would be allowed to use the emergency rule-making procedures to promulgate rules for the period before permanent rules became effective. However, DOB would not be required to provide evidence of an emergency.

Effective Date

These provisions would take effect on the first day of the third month beginning after publication of the budget bill.

Joint Finance: Delete provision as non-fiscal policy.

Assembly: Restore provision.

Conference Committee/Legislature: Delete provision.

9. CONVERSIONS OF BUSINESS ENTITIES

Assembly: Modify current laws regarding conversions of business entities as described below.

Conversion to Another Form of Business Entity

Conversion of Corporations. New provisions would be created in Chapter 180 (relating to business corporations) to allow domestic corporations to convert to another form of business entity if the corporation satisfies the requirements listed below and if the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting. In addition to satisfying any applicable legal requirements of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting and that relate to the submission and approval of a plan of conversion, the domestic corporation would have to follow the procedures identified in state law regarding actions on a plan of merger or share exchange [s. 180.1103] for the submission and approval of a plan of conversion.

A business entity other than a domestic corporation (a domestic LLC, limited partnership, partnership, limited liability partnership or nonstock corporation or a foreign LLC, limited partnership or corporation) could convert to a domestic corporation if it satisfies the requirements described below and if the conversion is permitted under the applicable law of the jurisdiction that governs the business entity. Such an entity would have to use the procedures that govern the submission and approval of a plan of conversion of the jurisdiction that governs the business entity.

Conversion of LLCs. The proposal would also add new provisions to Chapter 183 (relating to limited liability companies) to permit a domestic LLC to convert to another form of business entity if it satisfies the requirements identified below and if the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the company is converting. Domestic LLCs would have to use the procedures that govern a plan of merger under current law [s. 183.1202] for the submission and approval of a plan of conversion.

A business entity other than a domestic LLC could convert to a domestic LLC if it satisfies the requirements outlined below and if the conversion is permitted under the applicable law of the jurisdiction that governs the business entity. Such business entities would have to use the procedures that govern the submission and approval of a plan of conversion of the jurisdiction that governs the business entity.

Required Elements of a Plan of Conversion. A plan of conversion would have to set forth all of the following:

a. The name, form of business entity, and the identity of the jurisdiction governing the business entity that is to be converted.

b. The name, form of business entity, and the identity of the jurisdiction that will govern the new business entity.

c. The terms and conditions of the conversion.

d. The manner and basis of converting the shares or other ownership interests of the business entity that are to be converted into the shares or other ownership interests of the new business entity.

e. The delayed effective date of the conversion, if applicable.

f. If a business entity other than a domestic corporation or LLC is converting to a domestic corporation or LLC, a copy of the articles of incorporation of the new domestic corporation or the articles of organization of the new domestic LLC.

g. Other provisions relating to the conversion.

Effective Date of Conversion. A conversion would be effective when all of the following occur:

a. The business entity that is to be converted is no longer subject to the applicable law of the jurisdiction that governed the organization of the business entity and is subject to the applicable law of the jurisdiction that governs the new business entity.

b. The new business entity has assumed all liabilities of the business entity that is to be converted.

c. The new business entity is vested with title to all property owned by the business entity that is to be converted without reversions or impairment.

d. The articles of incorporation, articles of organization, bylaws, operating agreement, certificate of limited partnership, or other similar governing document, whichever is applicable, of the new business entity are amended as provided in the plan of conversion.

e. All other provisions of the plan of conversion apply.

Certificate of Conversion. After a plan of conversion is submitted and approved, the business entity that is to be converted would have to deliver to DFI for filing a certificate of conversion that includes all of the following:

a. The plan of conversion.

b. A statement that the plan of conversion was approved in accordance with the applicable law of the jurisdiction that governs the organization of the business entity.

c. The delayed effective date of the conversion, if applicable.

d. If a business entity other than a domestic corporation or LLC is converting to a domestic corporation or LLC, a copy of the articles of incorporation or organization of the new domestic corporation or LLC.

e. If a domestic corporation or LLC is to be converted to another form of business entity, a copy of the articles of incorporation, articles of organization, bylaws, operating agreement, certificate of limited partnership, or other similar governing document, whichever is applicable, of the new entity.

Provisions Regarding Pending Investigatory Proceedings. The provision would provide that any civil, criminal, administrative, or investigatory proceeding that is pending against a business entity that is to be converted may be continued against the business entity after the effective date of conversion or against the new business entity.

Certificate of Conversion Filing Fee. The provision would establish a certificate of conversion filing fee of $150, to be paid to DFI.

Effect of Delivery or Filing of LLC Articles of Organization and Other Documents

Under current law, an LLC is formed when the articles of organization are filed with DFI, and the Department's filing of the articles of organization is conclusive proof that the LLC is organized and formed. The provision would add the following new provisions to this section of the statutes:

a. The status of a domestic or foreign LLC registered to transact business in this state and the liability of any member of any such company would not be adversely affected by errors or subsequent changes in any information stated in any filing under the statutes relating to LLCs.

b. DFI's filing of the articles of organization of a foreign LLC would be considered the certificate of authority for that company to transact business in this state and would be notice of all other facts set forth in the registration statement.

c. If a domestic or foreign LLC that is registered to transact business in this state dissolves, but its business continues without winding up and without liquidating the company, the status of the company before dissolution would continue to be applicable to the company as

it continues its business, and the company would not be required to make any new filings. Any filings made by such an LLC before dissolution would be considered to have been filed by the company while it continues its business.

d. If a domestic or foreign LLC that is registered to transact business in this state dissolves, any filings made by the company before dissolution would remain in effect as to the company and its members during the period of winding up and to the members during the period after the company's liquidation or termination with respect to the liabilities of the company.

Series of Members, Managers or LLC Interests

The provision would provide that an LLC operating agreement may establish, or provide for the establishment of, designated series or classes of members, managers or LLC interests that have separate or different preferences, limitations, rights or duties, with respect to profits, losses, distributions, voting, property or other incidents associated with the company.

Withdrawal from an LLC

Under current law, one of the ways a person may cease to be a member of an LLC is to withdraw from the LLC by a voluntary act. Except as provided below, unless the LLC operating agreement provides that a member does not have the power to withdraw by voluntary act from the LLC, the member may do so at any time by giving written notice to the other members, or on any other terms as are provided in the agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the LLC may recover damages for breach of the agreement or as a result of the wrongful conduct and may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of an LLC for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term or completion of that undertaking is a breach of the operating agreement.

If a member acquired an interest in an LLC for no or nominal consideration, the member may withdraw from the LLC only in accordance with the operating agreement and only at the time or upon the occurrence of an event specified in the agreement. If the operating agreement does not specify such a time or event, such members may not withdraw prior to the time for the dissolution and commencement of winding up of the LLC without the written consent of all members of the LLC.

The proposal would modify these provisions by:

a. Specifying that, in general, a member could withdraw from an LLC at any time by giving written notice to the other members, or on any other terms as are provided in the agreement.

b. Eliminating the provision that specifically allows LLCs to recover damages for breach of an operating agreement in cases where the withdrawing member has the power to withdraw but the withdrawal is a breach of the agreement.

c. Eliminating the provision that specifies that, in the case of an LLC for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term or completion of that undertaking is a breach of the operating agreement.

d. Providing that, if a member owns an interest in an LLC as to which the power to withdraw is restricted in the operating agreement, the member could withdraw only in accordance with the operating agreement and only at the time or upon the occurrence of an event specified in the agreement.

e. Specifying that, unless otherwise provided in an operating agreement, in the case of an LLC that is organized for a definite term or particular undertaking, the agreement would be considered to provide that a member may not withdraw before expiration of that term or completion of that undertaking.

Dissolution of LLCs

Under current law, unless otherwise provided in an LLC operating agreement, a domestic LLC is dissolved and its affairs must be would up if a member dissociates from the LLC. However, the business of the LLC may be continued by the consent of all of the remaining members within 90 days after the date on which the dissociation occurs at which time the remaining members may agree to the admission of one or more additional members or to the appointment of one or more additional managers, or both. The proposal would eliminate this provision for domestic LLCs that are organized after the budget bill's general effective date.

Applicability of Law to a Foreign LLC Filing to Become a Domestic LLC

Under current law, the laws of the state or other jurisdiction under which a foreign LLC is organized govern its organization and internal affairs and the liability and authority of its managers and members, regardless of whether the LLC obtained or should have obtained a Wisconsin certificate of registration. The proposal would modify this provision to specify that a foreign LLC that has filed a certificate of conversion to become a domestic LLC would be subject to the Wisconsin statutory provisions governing domestic LLCs on the effective date of the conversion and no longer subject to the requirements governing foreign LLCs.

Conference Committee/Legislature: Delete provision.

10. MODIFICATIONS TO CORPORATION AND LIMITED LIABILITY COMPANY FILING FEES

GPR-REV	$295,000

Assembly/Legislature: Modify corporation filing fees as outlined below.

a. Establish the fee for filing articles of incorporation at $100. The current fee generally is 1 cent for each authorized share, subject to a minimum of $90 and a maximum of $10,000.

b. Establish the filing fee for amending articles of incorporation at $40. The current fee generally is $40 plus 1 cent for each authorized share after the amendment, less a credit of 1 cent for each authorized share immediately before the amendment, subject to a maximum of $10,000.

c. Establish the fee for filing a restatement of articles of incorporation with or without amendment of articles at $40. The current fee generally is $40 plus 1 cent for each authorized share after the restatement and any amendment, less a credit of 1 cent for each authorized share immediately before the restatement and any amendment, subject to a maximum fee of $10,000.

d. Establish the fee for filing articles of merger at $50 for each domestic corporation and each foreign corporation authorized to transact business in this state that is a party to the merger. The current fee generally is $50 for each domestic corporation and each foreign corporation that is party to the merger plus 1 cent for each authorized share of the surviving domestic corporation after the merger, less a credit of 1 cent for each share that is authorized immediately before the merger by each domestic corporation that is a party to the merger, subject to a maximum fee of $10,000.

e. Establish the fee for filing articles of share exchange at $50 for each domestic corporation and each foreign corporation authorized to transact business in this state that is a party to the share exchange. The current fee generally is $50 for each domestic corporation and each foreign corporation that is a party of the share exchange plus 1 cent for each authorized share of the acquiring domestic corporation after the share exchange, less a credit of 1 cent for each share that is authorized immediately before the share exchange by the acquiring domestic corporation, subject to a maximum fee of $10,000.

f. Establish the fee for filing an annual report for a domestic corporation at $25 if submitted by authorized electronic means and at $40 if submitted on paper. The current fee is $25, regardless of how the report is submitted.

g. Establish the filing fee for an annual report for a foreign corporation at $65 if submitted by authorized electronic means and at $80 if submitted on paper. The current general fee is $50, regardless of how the report is submitted. The current provisions for an additional fee if the report shows that the foreign corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid--an additional $20 for each $1,000 or fraction thereof of the excess--would remain in place.

h. Establish the fee for filing an annual report for a foreign limited liability company at $65 if the report is submitted by authorized electronic means and at $80 if submitted on paper. The current fee is $50, regardless of how the report is submitted.

i. Specify that investment companies would pay the fees specified above. Under current law, investment companies pay different fees in certain cases.

It is estimated that these changes would result in additional program revenue to DFI of $135,000 in 2001-02 and $160,000 in 2002-03. Because funds not expended by the Department lapse to the general fund at the end of each fiscal year, GPR-earned would increase by the same amounts.

[Act 16 Sections: 2917b thru 2917p, 2918m, 2928r and 9320(1q)]

11. MERGER OR CONSOLIDATION OF COOPERATIVES

Assembly/Legislature: Modify current statutes regarding the merger or consolidation of cooperatives to provide that the currently required written plan of merger or consolidation must include a description of the treatment of the equity interest of the members under the merger or consolidation. Current law requires such plans to describe the proposed effect of the plan on members and stockholders of the cooperative, but does not specifically require a description of the treatment of the equity interest of the members.

Provide that the surviving association (in the case of a merger) or the new association (in the case of a consolidation) must prepare an annual report on the implementation of any provision in the plan of merger or consolidation relating to the equity interest of any member that was affected by the merger or consolidation. Specify that the report must be kept in the principal office of the surviving association or new association and that the report must be available for inspection by any member whose equity interest was affected by the merger or consolidation. Provide that the surviving association or new association must prepare the report until such time that the implementation of any provision in the plan of merger or consolidation to retire or repurchase the equity interest of any member that was affected by the merger or consolidation is complete.

These provisions would first apply to plans of merger or consolidation that are submitted to the board of directors of a cooperative on the bill's general effective date.

[Act 16 Sections: 2932h, 2932r and 9320(1j)]

12. SECURITIES REGISTRATION EXEMPTIONS

Assembly: Modify certain securities registration exemptions as outlined below.

Accredited Investors. Under current law, a person generally may not offer or sell any security in this state unless a registration statement relating to the security is filed with the Division of Securities (DOS) in the Department of Financial Institutions or unless the security is exempt from state registration requirements under federal law. Current law exempts certain types of securities and transactions from the registration requirements, however. One

exemption applies when the offer or sale is made to an individual who qualifies as an accredited investor under DOS's rules, as long as the security issuer reasonably believes the accredited investor has the knowledge and experience in financial matters that enables him or her to evaluate the merits and risks of the investment

The provision would specify that an offer or sale of a security to an accredited investor would be exempt from registration if the individual or person receiving the offer or making the purchase qualifies as an accredited investor under federal regulations [17 CFR 230.501(a)]. These regulations define "accredited investor" to include, among other things, financial entities such as banking institutions; individuals who have a net worth of greater than $1,000,000 or who have had an income of greater than $200,000 in the two most recent years; and a director, executive officer or general partner of the issuer of the securities being offered or sold.

In addition, the provision would eliminate the requirement that the issuer of securities must reasonably believe the accredited investor has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment in order for the transaction to be exempt from the registration requirement.

Limited Issuances. Another exemption under current law applies when: (a) the issuer of the security has its principal office in Wisconsin; (b) not more than 15 persons (other than the issuer, accredited investors, government agencies and financial institutions) will hold all of the securities after the sale; (c) no commission or other remuneration is paid for soliciting any person in this state, except to licensed broker-dealers and agents; and (d) no advertising is published, except as permitted by DOS. This provision would be modified by increasing the maximum number of persons who could hold the securities from 15 to 25.

An additional exemption under current law applies for transactions pursuant to an offer directed to not more than 10 persons in this state (excluding the issuer, accredited investors, government agencies and financial institutions, but including persons exempt under the provision described in the preceding paragraph), during any period of 12 consecutive months, if the offer or reasonably believes that all the persons in this state are purchasing for investment, and no commission or other remuneration is paid for soliciting any person in this state other than accredited investors. DOS may waive or modify these requirements by rule or order, and may require reports of sales under this exemption. The provision would modify this provision by increasing the maximum number of persons who could hold the securities from 10 to 25.

Agents Acting on Behalf of Securities Issuers. Under current law, a person generally must obtain a license from DOS in order to transact business as a securities broker-dealer or as a securities agent in this state. Current law exempts persons who give certain group presentations relating to securities, persons who engage exclusively in transactions on account of or with certain financial and governmental entities, and certain persons who are exempt from state licensing requirements under federal law. The provision would create a new exemption for agents who are acting exclusively on behalf of an issuer of securities and who make offers and sales of the issuer's securities in transactions involving accredited investors.

Conference Committee/Legislature: Delete provision.

13. REGULATION OF RENT-TO-OWN AGREEMENTS

Assembly/Legislature: Modify Wisconsin statutes to exclude rent-to-own agreements from the coverage provided under the Uniform Commercial Code -- Secured Transactions (Chapter 409) and from the Wisconsin Consumer Act (Chapters 421 to 427). Instead, create a new subchapter of the statutes for the purposes of regulating rent-to-own agreements, as outlined below.

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act. The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions. Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become, or for not more than a nominal additional payment has the option to become, the owner of the leased property.

Definitions

"Rental-purchase company" would mean a person engaged in the business of entering into rent-to-own agreements in this state or acquiring or servicing rent-to-own agreements that are entered into in this state.

"Rent-to-own agreement" would mean an agreement between a rental-purchase company and a lessee for the use of personal property if all of the following conditions are met: (a) the personal property that is rented is to be used primarily for personal, family or household purposes; (b) the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; (c) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and (d) the agreement permits, but does not obligate, the lessee to acquire ownership of the property.

Scope; Obligation of Good Faith

A rent-to-own agreement regulated under these provisions would not be governed by the laws relating to a security interest or a lease under the uniform commercial code or by the statutes relating to consumer transactions. The new provisions would not apply to any of the following: (a) a lease or bailment of personal property that is incidental to the lease of real property; (b) a lease of a motor vehicle; or (c) a credit sale, as defined under federal consumer protection laws and regulations.

Every agreement or duty under these provisions would impose an obligation of good faith in its performance or enforcement.

Territorial Application

For the purposes of these provisions, a rent-to-own agreement would be considered entered into in this state if either of the following applies: (a) a writing signed by a lessee and evidencing the obligation under the agreement or an offer of a lessee is received by a rental-purchase company in this state; or (b) the rental-purchase company induces a lessee who is a resident of this state to enter into the rent-to-own agreement by face-to-face solicitation or by mail or telephone solicitation directed to the particular lessee in this state.

License Requirement

No person could operate as a rental-purchase company without a valid license issued by the Division of Banking within the Department of Financial Institutions.

A written application for a rental-purchase company license would have to be made to DOB in the form prescribed by the Division, and would have to include the applicant's social security number (for individuals) or federal employer identification number (for business entities). The Division could only disclose this information to the Department of Revenue for the sole purpose of denying a license for delinquent taxes or to the Department of Workforce Development (DWD) for the purpose of denying a license for nonpayment of support. Applicants would be required to pay an application fee specified by rule. DOB could also require any applicant or licensee to file and maintain in force a bond, in a form prescribed by and acceptable to the Division, and in an amount determined by the Division.

Upon the filing of an application, DOB would be required to perform an investigation. In general, if the Division finds that the character, general fitness and financial responsibility of the applicant, its members (for partnerships and limited liability companies and associations) and its officers and directors (for corporations) warrant the belief that the business will be operated in compliance with these provisions, DOB would be required to issue a license to the applicant. The Division could deny an application by providing written notice to the applicant stating the grounds for the denial. A person whose application is denied could request a hearing within 30 days. DOB could appoint a hearing examiner to conduct the hearing.

DOB would be prohibited from issuing a license if: (a) the applicant fails to provide a social security number or employer identification number; (b) DOR certifies that the applicant is liable for delinquent taxes; or (c) the applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by DWD or a county child support agency related to paternity or child support proceedings or is delinquent in making court-ordered support payments.

The license would have to identify the location at which the licensee is permitted to conduct business. A separate license would be required for each place of business maintained

by the licensee, and the license would have to be posted in a conspicuous place at the business location. Licenses would not be assignable.

Licenses would remain in force until suspended or revoked or surrendered by the licensee. By July 1 of each year, each licensee would be required to pay to DOB an annual license fee specified by rule and provide a rider or endorsement to increase the amount of any required bond required by the Division.

Unless authorized to do so, in writing, by DOB, licensees could not conduct business as a rental-purchase company within any office, room or place of business in which any other business is solicited or engaged in.

DOB would be authorized to issue an order suspending or revoking any license if the Division finds that any of the following applies: (a) the licensee has violated any of the statutory provisions regarding rental-purchase companies and rent-to-own agreements, any rules promulgated by DOB under these statutes, or any lawful order of the Division; (b) a fact or condition exists that, if it had existed at the time of the original application for the license, would have warranted the Division in refusing to issue the license; (c) the licensee has made a material misstatement in a license application or in information furnished to DOB; (d) the licensee has failed to pay the annual license fee or has failed to maintain in effect any required bond; (e) the licensee has failed to timely provide any additional information, data and records required by DOB; or (f) the licensee has failed to pay any penalties due under these provisions within 30 days after receiving notice that the penalties are due

DOB would be required to restrict or suspend a license if the Division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by DWD or a county child support agency related to paternity or child support proceedings or who is delinquent in making court-ordered support payments. The Division would also be required to revoke a license if DOR certifies that the licensee is liable for delinquent taxes. Licensees would be entitled to notice and a hearing under the child support and tax delinquency license revocation provisions. No other notice or hearing would be provided.

Except as provided above in the provisions regarding child support and delinquent taxes, DOB would have to provide a written notice to the licensee of the Division's intent to issue an order suspending or revoking the license. The notice would have to specify the grounds for and the effective date of the proposed order. The licensee could file with DOB a written response to the allegations within 20 days after receiving the notice. The written response could contain a request for a contested case hearing, otherwise the right to a contested case hearing would be waived. If a timely request for a contested case hearing is received by DOB and if, in the opinion of the Division, the matter satisfies all of the requirements for a hearing, the matter would have to be scheduled for a hearing to commence within 60 days. DOB would be authorized to suspend or revoke the license if the licensee: (a) fails to file a timely response; (b) files a timely response but does not request a contested case hearing; or (c) files a timely response requesting

a hearing but, in DOB's opinion, the matter fails to satisfy all of the conditions required for a hearing. If the licensee files a timely response containing a proper request for a hearing, any order of the Division suspending or revoking the licensee's license would be stayed pending completion of the hearing proceedings.

No licensee could change its place of business to another location without DOB's prior approval. Licensees would have to provide at least 15 days' prior written notice of a proposed change under this provision and would have to pay any applicable fees specified by rule. Upon approval of the new location, DOB would have to issue an amended license specifying the date on which the amended license is issued and the new location.

Except as provided in the preceding paragraph, a licensee would have to notify DOB of any material change to the information provided in the licensee's original application for a license or provided in a previous notice of change. Licensees would have to provide such notice within 10 days after the change. Licensees would have to provide any additional information, data and records about the change to DOB within 20 days after the Division requests the information. DOB would be required to determine the cost of investigating and processing the change, and the licensee would be required to pay the cost within 30 days after the Division demands payment. Any change that is subject to this notice requirement would be subject to DOB approval. In reviewing the change, the Division would have to apply the criteria that are used for approval of an original license application.

By March 31 of each year, licensees would be required to file a report with DOB giving such reasonable and relevant information as the Division may require concerning the business and operations conducted by the licensee.

Licensees would be required to keep such books and records in the licensed location as, in the opinion of the Division, will enable DOB to determine whether these provisions are being observed. Licensees would have to preserve their records of a rent-to-own agreement for at least three years after making the final entry with respect to the agreement.

Powers and Duties of DOB; Administration

DOB would be authorized to issue any general order or special order in execution of or supplementary to these provisions, except that the Division could not issue an order that conflicts with these provisions.

For the purpose of discovering violations of these provisions, DOB could cause an investigation or examination to be made of the business of a licensee transacted under these provisions. The place of business, books of accounts, papers, records, safes and vaults of the licensee would be open to the Division for the purpose of an investigation or examination, and DOB would have the authority to examine under oath all persons whose testimony is required for an investigation or examination. The Division would be required to determine the cost of an investigation or examination, which would be paid by the licensee. The licensee would also

have to pay the cost of any hearing, including witness fees, unless DOB or a court finds that the licensee has not committed a violation. All costs owed to DOB would have to be paid within 30 days after the Division demands payment. The state could maintain an action for the recovery of any costs owed under this provision.

DOB would be authorized to promulgate rules for the administration of the provisions regarding rental-purchase companies and rent-to-own agreements. DOB would have the same power to conduct hearings, take testimony and secure evidence as is provided under statutes relating to sellers of checks.

The Division would have the duty, power, jurisdiction and authority to investigate, ascertain and determine whether these provisions or any lawful order issued under these provisions are being violated. DOB could report violations to the Attorney General or the district attorney of the proper county for prosecution.

General Requirements of Disclosure

The information required to be included in a rent-to-own agreement would have to be clearly and conspicuously disclosed in writing (in not less than 8-point standard type) on the face of the rent-to-own agreement above the line for the lessee's signature. The information would have to be disclosed before the time that the lessee becomes legally obligated under the agreement.

The required information would have to be accurate at the time it is disclosed to the lessee. If any information subsequently becomes inaccurate as a result of any act, occurrence or agreement by the lessee, the resulting inaccuracy would not be a violation.

Rental-purchase companies would be required to provide lessees with a copy of the completed rent-to-own agreement signed by the lessee. If more than one lessee is legally obligated under the same agreement, delivery of a copy of the completed agreement to one of the lessees would satisfy this requirement.

In a rent-to-own agreement, the lessee's payment obligations would have to be evidenced by a single instrument, which includes the signature of the rental-purchase company, the signature of the lessee and the date on which the instrument is signed.

Required Provisions of Rent-to-Own Agreements

Rental-purchase companies would have to include all of the following information, to the extent applicable, in every rent-to-own agreement:

a. A brief description of the rental property, sufficient to identify the property, including any identification number, and a statement indicating whether the property is new or

used. A statement that incorrectly indicates that new rental property is used would not be a violation.

b. The price at which the rental-purchase company would sell the property to the lessee if the lessee were to pay for the rental property in full on the date on which the rent-to-own agreement is executed, along with a statement that, if the lessee intends to acquire ownership of the rental property and is able to pay for the property in full or is able to obtain credit to finance the purchase, the lessee may be able to purchase similar property from a retailer at a lower cost.

c. The periodic rental payment for the rental property.

d. Any payment required of the lessee at the time that the agreement is executed or at the time that the property is delivered, including the initial rental payment, any application or processing charge, any delivery fee, the applicable tax and any charge for a liability damage waiver or for other optional services agreed to by the lessee.

e. The total number, total dollar amount, and timing of all periodic rental payments necessary to acquire ownership of the property.

f. The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees, and delivery charges that the lessee would incur if the lessee were to rent the rental property until the lessee acquires ownership, assuming that the lessee does not add or decline the liability damage waiver or optional services after signing the rent-to-own agreement.

g. The total of all charges to be paid by the lessee to acquire ownership of the rental property, which consists of the sum of the total dollar amount of all periodic rental payments and the total dollar amount of all other charges and fees, along with a statement that this is the amount a lessee will pay to acquire ownership of the property if the tax rates do not change and if the lessee does not add or decline the liability damage waiver or optional services after signing the rent-to-own agreement.

h. An itemized description of any other charges or fees that the rental-purchase company may charge the lessee.

i. A statement summarizing the terms of the lessee's option to acquire ownership of the property, including a statement indicating that the lessee has the right to acquire ownership at any time after the first payment by paying all past-due payments and fees and an amount not to exceed the cash price of the property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the agreement and that has as its denominator the total number of periodic rental payments.

j. A statement that, unless otherwise agreed, the lessee is responsible for the fair market value of the property, determined according to the early-purchase option formula (item "i"), if the property is stolen, damaged, or destroyed while in the possession of or subject to the control of the lessee. The statement would have to indicate that the fair market value would be determined as of the date on which the property is stolen, damaged or destroyed.

k. A statement that during the term of the agreement, the rental-purchase company is required to service the property to maintain it in good working condition, as long as no other person has serviced the property. In lieu of servicing the property, the company could, at its option, replace the property. The company's obligation to provide service would be limited to defects not caused by improper use or neglect by the lessee or harmful conditions outside the control of the company or manufacturer.

l. A statement that the lessee could terminate the agreement at any time without penalty by surrendering or returning the property in good repair.

m. A brief explanation of the lessee's right to reinstate a rent-to-own agreement.

n. A statement that the lessee will not own the rental property until the lessee has made all payments necessary to acquire ownership or has exercised the early-purchase option. The rental-purchase company would also have to include a notice reading substantially as follows: "You are renting this property. You will not own the property until you make all payments necessary to acquire ownership or until you exercise your early-purchase option. If you do not make your payments as scheduled or exercise your early-purchase option, the lessor may repossess the property."

o. The names of the rental-purchase company and the lessee, the rental-purchase company's business address and telephone number, the lessee's address and the date on which the rent-to-own agreement is executed.

Prohibited Provisions of Rent-to-Own Agreements

A rental-purchase company could not include any of the following provisions in a rent-to-own agreement:

a. A confession of judgment.

b. A provision granting the company a security interest in any property except the rental property delivered by the company under the rent-to-own agreement.

c. A provision authorizing the rental-purchase company or its agent to enter the lessee's premises or to commit a breach of the peace in the repossession of rental property provided by the company under the rent-to-own agreement.

d. A waiver of a defense or counterclaim, a waiver of any right to assert any claim that the lessee may have against the rental-purchase company or its agent or a waiver of statutory provisions regarding rental-purchase companies and rent-to-own agreements

e. A provision requiring periodic rental payments totaling more than the total dollar amount of all periodic rental payments necessary to acquire ownership, as disclosed in the rental-purchase agreement.

f. A provision requiring the lessee to purchase insurance from the company to insure the rental property.

g. A provision requiring the lessee to pay attorney fees.

Liability Waiver

A rental-purchase company could offer a liability waiver to the lessee. The terms of the waiver would have to be provided to the lessee in writing, and the face of the writing would have to clearly disclose that the lessee is not required to purchase the waiver. The fee for the waiver could not exceed 10% of the periodic rental payment due under the rent-to-own agreement. The lessee would be entitled to cancel the waiver at the end of any rental term.

Early-Purchase Option

An early-purchase option under a rent-to-own agreement would have to permit the lessee to purchase the rental property at any time after the initial periodic rental payment for an amount determined according to the early-purchase option formula disclosed in the agreement. As a condition of exercising the early-purchase option, the rental-purchase company could require the lessee to be current on the payments under the lessee's rent-to-own agreement or to pay any past-due rental charges and other outstanding fees that are owed.

Receipts and Statements

Rental-purchase companies would be required to provide a written receipt to a lessee for any payment made by the lessee in cash, or upon the request of the lessee, for any other type of payment.

Upon the request of a lessee, rental-purchase companies would have to provide a written statement showing the lessee's payment history under each rent-to-own agreement between the lessee and the company. The statement would not be required for agreements that terminated more than one year before the date of the lessee's request. Rental-purchase companies would have the option to provide a single statement covering all rent-to-own agreements or separate statements for each agreement.

Rental-purchase companies would also be required to provide a written statement to any person designated by the lessee showing the lessee's payment history under the rent-to-own agreement, if the lessee requests the statement in writing during the term of the agreement or within one year after the termination of the agreement.

A lessee or, if appropriate, a lessee's designee would be entitled to receive one statement under these provisions without charge once every 12 months. The company could require lessees to pay the company's reasonable costs of preparing and furnishing additional statements.

Price Cards

In general, rental-purchase companies would be required to display a card or tag that clearly and conspicuously states all of the following information on or next to any property displayed or offered by the company for rent under a rent-to-own agreement: (a) the cash price that an individual would pay to purchase the property; (b) the amount of the periodic rental payment and the term over which the payment must be made; (c) the total number and total dollar amount of all periodic rental payments necessary to acquire ownership of the property under a rent-to-own agreement and (d) whether the property is new or used.

However, if property is offered for rent through a catalog, or if the size of the property is such that displaying a card or tag on or next to the property is impractical, the company could make the required disclosures in a catalog or list that is readily available to prospective lessees.

Advertising

As a general requirement, if an advertisement for a rent-to-own agreement refers to or states the amount of a payment for a specific item of property, the rental-purchase company would have to ensure that the advertisement clearly and conspicuously states all of the following: (a) that the transaction advertised is a rent-to-own agreement; (b) the total number and total dollar amount of all periodic rental payments necessary to acquire ownership of the property; and (c) that the lessee does not acquire ownership of the property if the lessee fails to make all periodic rental payments or other payments necessary to acquire ownership.

This requirement would not apply to an in-store display or to an advertisement that is published in the yellow pages of a telephone directory or in a similar directory of businesses.

Referral Transactions

Rental-purchase companies would be prohibited from inducing any individual to enter into a rent-to-own agreement by giving or offering to give a rebate or discount to the individual in consideration of the individual giving to the company the names of prospective lessees if the earning of the rebate or discount is contingent on the occurrence of any event that takes place after the time that the individual enters into the rent-to-own agreement.

After entering into a rent-to-own agreement, a rental-purchase company could give or offer to give a rebate or discount to the lessee in consideration of the lessee giving to the company the names of prospective lessees. Such a rebate or discount could be contingent on the occurrence of any event that takes place after the time that the names are given to the rental-purchase company.

Termination of Rent-to-Own Agreements

The termination date of a rent-to-own agreement would be the earlier of: (a) the day specified in the agreement, unless a different day has been established pursuant to the terms of the agreement; or (b) the date on which the lessee voluntarily surrenders the rental property.

Late Payment, Grace Period and Late Fees

In general, if a lessee fails to make a periodic rental payment when due or if, at the end of any rental term, the lessee fails to return the rental property or to renew the rent-to-own agreement for an additional term, the rental-purchase company would be authorized to charge a late fee. This provision would not apply if the lessee's failure to return the property or failure to renew the agreement is due to the lessee's exercise of an early-purchase option or is due to the lessee making all periodic rental payments necessary to acquire ownership of the rental property.

The following grace periods would apply to periodic rental payments made with respect to a rental-purchase agreement: (a) for an agreement that is renewed on a weekly basis, no late fee could be assessed for a periodic rental payment that is made within two days after the due date; and (b) for an agreement that is renewed for a term that is longer than one week, no late fee could be assessed for a periodic rental payment that is made within five days after the due date.

Late fees would be subject to all of the following limitations: (a) they could not exceed $5 for each past-due periodic rental payment; (b) they could be collected only once on each periodic rental payment due, regardless of how long the payment remains past due; (c) payments received would have to be applied first to the payment of any rent that is due and then to late fees and any other charges; and (d) a late fee could be collected at the time that the late fee accrues or at any time afterward.

A rental-purchase company could require payment of any outstanding late fees before transferring ownership of rental property to a lessee.

Reinstatement of a Terminated Rent-to-Own Agreement

In general, a lessee could reinstate a terminated rent-to-own agreement without losing any rights or options previously acquired if: (a) the lessee returned or surrendered the property

within five days after the termination of the agreement; and (b) not more than 21 days have passed after the date on which the rental property was returned to the rental-purchase company or, if the lessee has paid two-thirds or more of the total number of periodic rental payments necessary to acquire ownership of the rental property, not more than 45 days have passed since the date on which the property was returned.

As a condition of reinstatement, the rental-purchase company could require the payment of all past-due rental charges, any applicable late fees, a reinstatement fee not to exceed $5 and the periodic rental payment for the next term.

These provisions would not prohibit a rental-purchase company from attempting to repossess rental property upon termination of a rent-to-own agreement, but repossession efforts would not affect the lessee's right to reinstate the agreement as long as the rental property is voluntarily returned or surrendered within five days after the termination of the agreement.

Upon reinstatement, the rental-purchase company would have to provide the lessee with the same rental property, if the property is available and is in the same condition as when it was returned to the company, or with substitute rental property of comparable quality and condition.

Reduced Periodic Rental Payment Due to Reduced Income

If a lessee's monthly income is reduced by 25% or more due to pregnancy, disability, involuntary job loss or involuntary reduction in the amount of hours worked or wages earned, the rental-purchase company would be required to reduce the amount of each periodic rental payment due by the same percentage that the lessee's monthly income is reduced or by 50%, whichever is less, for the period of time during which the lessee's income is reduced. This requirement would apply only if: (a) the total dollar amount of periodic rental payments made by the lessee under the agreement equals more than 50% of the amount necessary to acquire ownership of the rental property; and (b) the lessee has provided the rental-purchase company with reasonable evidence of the amount and cause of the reduction in the lessee's monthly income.

At reasonable intervals after reducing the amount of a periodic rental payment, a rental-purchase company could require the lessee to provide evidence of the lessee's monthly income and evidence that the cause of the reduction in the lessee's monthly income has not abated.

If a rental-purchase company reduces the amount of a periodic rental payment, the company could increase the total number of payments necessary to acquire ownership of the property. In addition, if the lessee's monthly income is increased, the rental-purchase company could increase, by the same percentage that the lessee's monthly income is increased, the amount of each periodic rental payment due after the date on which the lessee's monthly income is increased.

If a rental-purchase company increases the amount or number of periodic rental payments due, the increase would only affect the rights or duties of the lessee to the extent authorized in the preceding paragraph. No rental-purchase company, acting under the above provisions, could increase the total dollar amount of payments necessary to acquire ownership of the rental property, or the amount of a payment, to greater than the amount disclosed in the rent-to-own agreement.

Default and Right to Cure

In general, a lessee would be in default under a rent-to-own agreement if: (a) the lessee fails to return the rental property within seven days after the date on which the last term for which a periodic rental payment was made expires, unless the lessee has exercised an early-purchase option or has made all periodic rental payments necessary to acquire ownership of the rental property; or (b) the lessee materially breaches any other provision of the agreement.

No cause of action would accrue against a lessee with respect to the lessee's obligations under a rent-to-own agreement except upon default and the expiration of any applicable period of time allowed for cure of the default.

Generally, as a condition precedent to bringing an action against a lessee arising out of the lessee's default, a rental-purchase company would be required to provide the lessee with written notice of the default and of the right to cure the default. The notice would have to specify the default and the action required to cure the default and inform the lessee that, if the default is not cured within 15 days after the notice is given, the company would have the right to bring an action against the lessee. This requirement would not apply if each of the following occurred twice during the 12 months before the date of the current default with respect to the same rent-to-own agreement: (a) the lessee was in default; (b) the rental-purchase company gave the lessee written notice of the default and of the lessee's right to cure; and (c) the lessee cured the default.

A rental-purchase company could request the voluntary return or surrender of rental property prior to the declaration of a default and the sending of written notice of default and right to cure. Such a request would be subject to the requirements regarding rental-purchase company collection practices outlined below.

Rental-Purchase Company Collection Practices

In attempting to recover possession of rental property or to collect past-due periodic rental payments or other charges owed under a rent-to-own agreement, a rental-purchase company could not do any of the following:

a. Use or threaten to use force or violence to cause physical harm to the lessee or the lessee's property or to a person related to the lessee.

b. Threaten criminal prosecution. However, it would not be a violation of this provision for a rental-purchase company to inform a lessee that intentionally failing to return rental property within 10 days after the rental agreement has expired is criminal theft under state law [s. 943.20(1)(e)] and the consequences of violating that section.

c. Disclose or threaten to disclose information adversely affecting the lessee's reputation for creditworthiness with knowledge or reason to know that the information is false.

d. Initiate or threaten to initiate communication with the lessee's employer prior to obtaining final judgment against the lessee, except for the purpose of enforcing an assignment of earnings. This provision would not prohibit a rental-purchase company from communicating with a lessee's employer solely to verify employment status or earnings or to determine if the employer has an established debt counseling service or procedure.

e. Disclose or threaten to disclose to a person other than the lessee or the lessee's spouse information affecting the lessee's reputation, whether or not for creditworthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information. However this provision would not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute or an inquiry solely for the purpose of determining the location of the lessee or the rental property.

f. Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the lessee without disclosing the fact that the lessee disputes the debt.

g. Communicate with the lessee or a person related to the lessee with such frequency, at such unusual hours, or in such a manner as can reasonably be expected to threaten or harass the lessee or a person related to the lessee, or engage in any other conduct that can reasonably be expected to threaten or harass the lessee or a person related to the lessee.

h. Use obscene or threatening language in communicating with the lessee or a person related to the lessee.

i. Threaten to enforce a right with knowledge that the right does not exist.

j. Use a communication that simulates legal or judicial process or that gives the appearance of being authorized, issued or approved by a government, government agency or attorney-at-law when it is not.

k. Threaten to file a civil action against the lessee unless the civil action is of a type that the rental-purchase company files in the regular course of business or unless the rental-purchase company intends to file the civil action against the lessee.

Assignment of Earnings

Rental-purchase companies would be prohibited from taking or arranging for an assignment of earnings of an individual for payment or as security for payment of an obligation arising out of a rent-to-own agreement unless the assignment is revocable at will by the individual.

Penalties

The following offenses by rental-purchase companies would be punishable with a forfeiture of up to $50: (a) failure to timely file an annual report or pay the annual license fee; (b) failure to timely provide any required rider or endorsement to increase the amount of a bond; (c) failure to timely provide examination records; (d) failure to timely notify DOB of a relocation of the licensee's place of business; or (e) failure to provide a required notice to the Division of other changes. Each day that such a failure continues would constitute a separate offense.

A licensee that fails to timely provide any additional information, data or records requested by DOB could be required to forfeit not more than $100. Each day that such a failure continues would constitute a separate offense.

Any person who violates the provisions regarding investigations and examinations by DOB or any provision relating to licensure of rental-purchase companies (other than those described in the preceding two paragraphs) could be fined up to $1,000, imprisoned for up to six months, or both.

Civil Actions and Defenses

In general, a rental-purchase company that violates any provision of the statutes relating to rental-purchase companies and rent-to-own agreements would be liable to a lessee damaged as a result of that violation for the costs of the action and for reasonable attorney fees as determined by the court, plus an amount equal to the greater of: (a) the actual damages, including any incidental and consequential damages, sustained by the lessee as a result of the violation; or (b) an amount equal to 25% of the total amount of payments due in one month under the lessee's rent-to-own agreement, but not less than $100 nor more than $1,000.

If a rental-purchase company violates the statutes regarding prohibited provisions of a rent-to-own agreement, the lessee could retain the rental property without obligation to pay any amount and could recover any amounts paid to the rental-purchase company under the agreement.

In the case of a class action, a rental-purchase company that violates any provision of the statutes relating to rental-purchase companies and rent-to-own agreements would be liable to the members of the class in an amount determined by the court, except that the total recovery for all lessees whose recovery is computed under item (b) above could not exceed $100,000 plus

the costs of the action and reasonable attorney fees. In determining the amount to award in a class action, the court would have to consider, among other relevant factors, the amount of actual damages sustained by the members of the class, the frequency and persistence of the violations by the rental-purchase company, the resources of the company, the number of persons damaged by the violation, the presence or absence of good faith on the part of the rental-purchase company and the extent to which the violation was intentional.

A rental-purchase company would not be liable for a violation resulting from an error by the company if, within 60 days after discovering the error, the company notifies the lessee of the error and makes any adjustments necessary to correct the error.

A rental-purchase company would also not be liable for a violation if the company shows by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, and that the company has acted to correct the error. A bona fide error would include a clerical error, an error in making calculations, an error due to computer malfunction or to computer programming, or a printing error.

In general, multiple violations in connection with the same rent-to-own agreement would entitle the lessee to only a single recovery. However, additional recoveries could be made for a violation of prohibited collection practices that occurs after recovery has been granted with respect to that rent-to-own agreement.

If more than one lessee is a party to the same rent-to-own agreement, all of the lessees that are parties to the agreement would be joined as plaintiffs in any action against the rental-purchase company, and the lessees would be entitled to only a single recovery.

Limitation on Actions

An action brought by a lessee under these provisions would have to be commenced within one year after the date on which the alleged violation occurred, two years after the date on which the rent-to-own agreement was entered into, or one year after the date on which the last payment was made under the agreement, whichever is later.

Venue

In general, the venue for a claim arising out of a rent-to-own agreement would be any of the following counties: (a) where the lessee resides or is personally served; (b) where the rental property is located; or (c) where the lessee sought or acquired the property or signed the document evidencing his or her obligation under the terms of the agreement.

When it appears from the return of service of a summons or otherwise that the county in which an action is pending under the above provisions is not a proper place of trial for the

action, unless the defendant appears and waives the improper venue, the court would be required to transfer the action to any county that is a proper place of trial.

If there are several defendants in an action arising out of a rent-to-own agreement, and if venue is based on residence, venue could be in the county of residence of any of the defendants.

Emergency Rules

DOB would be authorized to promulgate emergency rules prescribing license fees for the period before the date on which permanent rules take effect without making a finding of emergency.

Effective Date

These provisions would take effect on the first day of the 6th month beginning after publication of the budget act, and would first apply to rent-to-own agreements entered into on that date.

Veto by Governor [F-5]: Delete provision.

[Act 16 Vetoed Sections: 3020p, 3020v, 3021v, 3021w, 3492f, 3492r, 9120(1d), 9320(1d) and 9420(1d)]